

# A TALE OF TWO STATES: RACE, GENDER, AND PUBLIC/PRIVATE WELFARE PROVISION IN POSTWAR AMERICA

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The simultaneous expansion of employer-sponsored “fringe benefits” and of government welfare programs in the post-World War II period created what might be termed a “public-private welfare state” in the United States. These developments were continuous with the public-private partnership that had characterized American welfare provision since the nineteenth century. But the increased range and scope of benefits, both public and private, in the postwar period made them an intrinsic part of Americans’ way of life and their sense of well-being—that is, of their social citizenship.<sup>1</sup>

Feminist political theorists often point out that social citizenship is highly inflected by gender; citizens usually gain entitlements and benefits based on sex or on types of status that are gender-related, such as employment, military service, and motherhood.<sup>2</sup> This paper seeks to explore how differences in social citizenship play out in a public-private welfare state, where benefits are predicated, at least in part, upon *private* employment. I do this by analyzing the treatment of motherhood (the benefits accruing to women *as mothers*) in such a dual state during its formative period, using the provision of childcare as a marker of women’s status and entitlements within the public and private spheres.

In modern industrial societies, childcare is an essential element of social citizenship for women, for it allows them to participate in the labor force on an equal footing with men. (I should note that it is a necessary but not sufficient condition for economic gender equality; equal access to education and training, non-discriminatory hiring and employment conditions, and wage equity are also essential.) Thus this article will examine and compare childcare provisions in the public and private sectors of the postwar American welfare state.

My article focuses on two simultaneous developments in the area of childcare policy that reveal quite clearly the workings of the public-private state and its effects on women and gender relations: a sharp growth in private-sector childcare services, and the shift from welfare to “workfare” (the campaign to

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1. The term “social citizenship” was coined by T.H. Marshall in his famous essay, *Citizenship and Social Class*, in CITIZENSHIP AND SOCIAL CLASS 8 (T.H. Marshall & Tom Bottomore eds., 1992).

2. See, e.g., Ann Shola Orloff, *Gender and the Social Rights of Citizenship: The Comparative Analysis of Gender Relations and Welfare States*, 58 AM. SOC. REV. 303 (1993); Carole Pateman, *The Patriarchal Welfare State*, in DEMOCRACY AND THE WELFARE STATE 232 (Amy Gutmann ed., 1989); Carole Pateman, *Equality, Difference, Subordination: The Politics of Motherhood and Women’s Citizenship*, in BEYOND EQUALITY AND DIFFERENCE: CITIZENSHIP, FEMINIST POLITICS AND FEMALE SUBJECTIVITY 17 (Gisela Bock & Susan James eds., 1992).

move women from Aid to Families with Dependent Children (AFDC) to paid employment), both of which began in the 1960s. The impact on motherhood of these two types of developments was sharply differentiated by class/employment status and, to an extent, also by race. While certain groups of employee mothers (those deemed most valuable by corporations—not all working mothers) could take advantage of high-quality, employer-sponsored childcare programs and other benefits designed to ease conflicts between work and family, or could readily purchase childcare services in the marketplace, AFDC mothers were increasingly confronted with mandates to find work, even in the absence of decent childcare or other provisions.

This paper has two theoretical starting points: Barbara Nelson's model of the two-channel welfare state, and Gøsta Esping-Andersen's tripartite typology of welfare state regimes. I will explain how each of these theories contributes to my analysis.

Nelson's model emerged from her study of the development of the American welfare state during the Progressive Era. She has argued that the welfare state at that time was divided into two streams or channels, one male, one female. In the male channel, benefits were conferred on the basis of labor force participation; they were, on the whole, characterized by generosity and rarely means-tested. This meant that recipients, though clients of the government, retained their dignity and sense of independence—of having contributed to and thus “earned” their benefits, which included such entitlements as workmen's compensation and soldier's pensions. In the female stream, by contrast, benefits were conferred on the basis of a relationship of dependency or caretaking—that is, by virtue of the fact that the recipient was either the wife or child of a (male) wage-earner, and/or the mother of children. Such benefits were characterized by a lack of generosity, were usually means-tested, and often involved ongoing surveillance and moral judgments on the part of social workers or bureaucrats. Such benefits included military survivors' pensions or, later, widows' or mothers' pensions, the forerunners of Aid to Families with Dependent Children. Together, these different sets of benefits constituted what Nelson calls the two-channel welfare state, one conferring dignity and entitlement on its clients, the other stigmatizing them and keeping them on short rations. Both channels are marked by gender.<sup>3</sup>

Nelson's model aptly describes the American welfare state as it emerged during the Progressive Era and continued through the 1920s. But in the 1930s and 1940s two major changes occurred. First, New Deal legislation—the Social Security Act—subdivided the female channel by distinguishing between two groups of women. The first group included widows who would receive non-means-tested Survivors' Insurance based on their husbands' employment records; the second group was comprised of women whose husbands were not

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3. See Barbara Nelson, *The Origins of the Two-Channel Welfare State: Workmen's Compensation and Mothers' Aid*, in *WOMEN, THE STATE, AND WELFARE* 125-51 (Linda Gordon ed., 1990).

covered by Social Security or who had never married in the first place, some of whom now became eligible for Aid to Dependent Children (ADC), a means-tested program that carried much of the stigma of earlier mothers' pension policy. Second, employment patterns during and after World War II eroded the fundamental gender premises underlying Nelson's model—namely, the social division between male breadwinners and female housewives and mothers—as increasing numbers of wives and mothers entered the labor force.

How did these changes affect women's relationship to the welfare state? Answering this question brings me to my second starting point, the typology of welfare-state regimes set out by Gøsta Esping-Andersen in his influential book, *The Three Worlds of Welfare Capitalism*.<sup>4</sup> According to Esping-Andersen, modern welfare-state regimes cluster around three types: liberal, corporatist, and social democratic, with the United States falling into the category of liberal. Social provision in this type of welfare state is characterized by a public-private partnership. According to Esping-Andersen, "The state encourages the market, either passively—by guaranteeing a minimum—or actively, by subsidizing private welfare schemes," to offer benefits that would likely be provided by the state itself in other types of welfare-state regimes.<sup>5</sup> While such a pattern had been apparent in the United States since the late nineteenth century, it became increasingly significant after World War II, as businesses, largely at the behest of organized labor, established benefit schemes on a broad scale, taking up an increasing share of social welfare provision and at the same time extending the reach of the American public-private welfare state.<sup>6</sup>

If we overlay Nelson's model with Esping-Andersen's, we see an important modification for the postwar period: Many of the benefits that Nelson located in the male channel of the *public* welfare state—that is, benefits conferred on the basis of employment status—are now located in the *private* sector of the welfare state, with the result that the male channel and the private sector increasingly coincide. At the same time, however, we see that Nelson's strict gender scheme no longer holds up; with women in the labor force, there are now women on *both* sides of the public-private divide—as workers and as the dependents of workers and/or as mothers.

Our question now becomes, how do women, particularly mothers, fare in this new system of social provision? Where do women look for needed services? How responsive is the private sector to the needs of female wage-earners, and how effective are women in shaping the benefit "packages" available to them? How does the rise in female labor force participation, particularly among

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4. GØSTA ESPING-ANDERSEN, *THE THREE WORLDS OF WELFARE CAPITALISM* (1990).

5. See *id.* at 26-27.

6. See generally BETH STEVENS, *COMPLEMENTING THE WELFARE STATE: THE DEVELOPMENT OF PRIVATE PENSION, HEALTH INSURANCE, AND OTHER EMPLOYEE BENEFITS IN THE UNITED STATES* (1986) (providing a history of this period).

mothers of small children, affect the basis for entitlement and the types of services available in the public sector? To what extent do public provisions complement or compensate for private benefits? Do women have more or less purchase on social entitlements in this bi-gendered public-private welfare state?

#### CHILDCARE IN THE PUBLIC SECTOR

Provision of childcare has, throughout American history, been sporadic and inadequate. Until the Depression and World War II, most services were offered through the private sector—not by businesses, however, but by philanthropic organizations.<sup>7</sup> Under the New Deal, the federal government sponsored childcare through the WPA's Emergency Nursery Schools program, and during World War II, after much debate, it finally established childcare centers under the provisions of the Lanham Act.<sup>8</sup> Federal childcare programs did not emerge as an immediate and unequivocal response to the presence of women in the labor force or even to wartime labor demands, but as the result of often tortured and polarized discussions about the role of women in society and particularly about children's needs and mothers' responsibilities.

These discussions notwithstanding, more mothers entered the labor force during World War II than ever before in American history and, after a brief postwar dip, the trend continued. The number of mothers of children under eighteen who were employed rose from about ten percent in 1950 to over thirty percent by 1962—a total of nine million women. More than a third of these wage-earning mothers (3.3 million) had children under age six. One fifth of the mothers with children under three were employed, and in solo-mother households, the proportion was as high as one-third.<sup>9</sup>

Continuing high levels of maternal employment prompted a general discussion about whether or not mothers should work, a discussion that resolved itself in a split based on class (and, implicitly, race).<sup>10</sup> Public opinion condoned employment for middle-class mothers who could find adequate childcare or arrange their working hours to coincide with school hours, the main idea being that such women were entitled to self-fulfillment but should not permit employment to conflict with or take priority over their responsibilities to their children. Public opinion also condoned employment for working-class mothers, but on distinctly different grounds. These women *needed* to work in order to

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7. See generally MICHAEL KATZ, *IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA* (1986).

8. See SONYA MICHEL, *CHILDREN'S INTERESTS / MOTHERS' RIGHTS: THE SHAPING OF AMERICA'S CHILD CARE POLICY* (forthcoming 1998) (manuscript at 224-83, on file with author).

9. Five and a half million working mothers had children ages 6 to 18. See Seth Low, *Child Welfare Services, 1962—Their Range and Extent*, *WELFARE IN REV.*, July 1963, at 10, 15; HOUSE OF REPRESENTATIVES COMM. ON WAYS AND MEANS, 102ND CONG., 1994 GREEN BOOK: OVERVIEW OF ENTITLEMENT PROGRAMS 553 (Comm. Print 1994).

10. The following discussion is drawn from MICHEL, *supra* note 8 (manuscript at 284-368, on file with author).

raise and maintain their families' standard of living and, in extreme cases, keep their families off the welfare rolls. Thus while paid employment was regarded as optional for middle-class mothers, it was virtually mandatory for those who were low-income and working-class, especially women of color.

The class and racial split carried over to discussions of governmental support for childcare. By the early 1960s the issue of childcare was receiving more national attention than at any time since World War II, largely due to the efforts of a growing national childcare movement.<sup>11</sup> Moving cautiously, this movement refrained from endorsing maternal employment unconditionally, nor did it demand federal support for childcare services. Instead, movement leaders took the position that many mothers had to work out of financial need, and that in those cases "the local community" should see to it that childcare was provided. This guarded and class-divided position precluded the possibility of claiming a universal right to childcare guaranteed by the federal government. It did, however, open the way for a major shift in public policy toward low-income women.

In 1960 the childcare movement, in conjunction with several federal agencies, held a national conference on childcare, to which President-elect John F. Kennedy sent a striking message:

We must have provision for day care centers for children whose mothers are unavailable during the day. Without adequate day time care during their most formative years the children of the nation risk permanent damage to their emotional and moral character. . . . I believe we must take further steps to encourage day care programs that will protect our children and provide them with a basis for a full life in later years. The suggestion of a program of research, financing, and development to serve the children of working mothers and of parents who *for one reason or another* cannot provide adequate care during the day deserves our full support.<sup>12</sup>

Kennedy's message seemed to promise a broad-based commitment by the federal government to childcare for families from all class backgrounds. But, as we shall see, this did not materialize in actual policy. Class and racial divisions in public attitudes toward maternal employment as well as within policy-making circles prevented a universalistic position on childcare from gaining hegemony. Instead, narrowly delimited childcare provisions became part of an overall program to

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11. See *id.* (manuscript at 369-461, on file with author).

12. WOMEN'S BUREAU, U.S. DEP'T OF LABOR, PUB. NO. 281, DAY CARE SERVICES: FORM AND SUBSTANCE 13-14 (Gertrude L. Hoffman ed., 1961) (emphasis added).

reduce welfare rolls by using workfare to rehabilitate recipients and make them financially independent.<sup>13</sup>

This program was embodied in two key pieces of legislation: the Social Security Amendments of 1962 and 1967. The 1962 bill aimed at "rehabilitating" AFDC recipients so that they would become self-sufficient by requiring that they either seek work or enter job training programs.<sup>14</sup> Mothers of preschool children were explicitly exempted from the requirement, though the bill did provide block grants to create childcare intended to *encourage* mothers who were current or potential AFDC recipients to seek work or training. The 1967 bill, which established the Work Incentive or WIN program, was somewhat more coercive with regard to mothers.<sup>15</sup> Under WIN, states had the option of "referring" to job programs mothers of children under six (or even under three, if they chose), *provided childcare was available*.

These two bills signaled a distinct shift from previous government policy toward low-income mothers, which had operated on the principle that mothers belonged at home taking care of their children. This principle was embodied in the mothers' and widows' pension legislation passed during the Progressive Era (the major component of Nelson's "female channel"), and became federal policy during the 1930s when mothers' and widows' pensions were transformed by the Social Security Act.

The incorporation of mothers' pensions into Social Security had mixed implications for low-income and solo mothers. On the one hand, it attempted to eliminate some—though not all—of the inequalities and variations that had characterized state-level pension policies.<sup>16</sup> On the other hand, Social Security became the Trojan Horse that introduced into American social provision a highly discriminatory, two-tiered system that skimmed off one group of women for non-means-tested benefits under Survivors' Insurance while subjecting the remainder to the scrutiny and surveillance that accompanied ADC.<sup>17</sup> The first group consisted of the widows of workers—mainly white men—who had been employed in "covered" occupations, while the second comprised widows of "non-covered" workers (mainly African-American men), plus women who were divorced, deserted, never-married, etc. Whereas widows had made up about three-quarters of those covered by state pensions, they numbered less than ten percent of those on ADC. Without the leavening of the "worthy" (white) widows whose image had been used to gain legitimacy for mothers' pension policy, the population of ADC recipients became stigmatized and politically vulnerable.

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13. See NANCY E. ROSE, *WORKFARE OR FAIR WORK: WOMEN, WELFARE, AND GOVERNMENT WORK PROGRAMS* 76-96 (1995).

14. See Act of July 25, 1962, Pub. L. No. 87-543, 76 Stat. 172.

15. See Social Security Act of 1967, Pub. L. No. 90-248, § 204, 81 Stat. 821 (1968).

16. See LINDA GORDON, *PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE* 274-80 (1994).

17. See GWENDOLYN MINK, *THE WAGES OF MOTHERHOOD: INEQUALITY IN THE WELFARE STATE, 1917-1942*, at 136-39 (1995).

In addition to the formal, explicitly discriminatory features of the two-tiered public assistance program, administrative practices of a discretionary and highly arbitrary nature also penalized women of color. Southern states routinely "cycled" African-American mothers on and off ADC by compelling them to take low-wage jobs on a seasonal basis or disqualifying them outright on narrowly technical grounds.<sup>18</sup> Often they were barred from receiving benefits on the basis of illegitimacy, which—according to officials—was incompatible with the "suitable home" requirement.<sup>19</sup> Since non-married motherhood was more common among blacks than whites (ranging around ten times greater between 1940 and 1960),<sup>20</sup> more black women were excluded by this strict interpretation of the policy.

The systematic exclusion of blacks from welfare had an important corollary: it meant that black mothers continued (as they had since Emancipation) to participate in the labor force at a higher rate than white mothers, regardless of marital status. Moreover, black mothers, with few or no alternatives, could seldom avoid being channeled into the lowest echelons of the employment market. This pattern, in conjunction with the two-tiered federal policy, produced a set of racially-bifurcated assumptions about solo motherhood: poor black mothers of all classes were expected to work, while poor and middle-class white mothers were not.<sup>21</sup> Clearly, ADC did not apply equally to all solo mothers. For poor black women a de facto form of workfare appears to have been built into federal welfare policy from the very beginning.<sup>22</sup>

It was not until the 1960s, however, that workfare for mothers was articulated as an explicit policy goal. While the legislation was not race-specific on its face, there are strong indications that its passage was racially motivated.<sup>23</sup> The immediate precipitants of workfare were twofold: a marked expansion of public assistance, and changes in the racial composition of those receiving aid. Between 1940 and 1960, the number of ADC/AFDC recipients had grown by nearly one million per decade (from 1.2 million in 1940 to 3.1 million in 1960), and the cost had increased more than sevenfold (from just over \$100 million in 1940 to

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18. The best discussion of this is still FRANCES FOX PIVEN & RICHARD CLOWARD, *REGULATING THE POOR* (1971). See also Joel Handler, *The Transformation of Aid to Families With Dependent Children: The Family Support Act in Historical Context*, 16 N.Y.U. REV. L. & SOC. CHANGE 487-88 (1987-1988).

19. See MINK, *supra* note 17, at 142-50. See also RICKIE SOLINGER, *WAKE UP, LITTLE SUSIE: SINGLE PREGNANCY AND RACE BEFORE ROE V. WADE* 37 (1992).

20. See Arthur A. Campbell & James D. Cowhig, *The Incidence of Illegitimacy in the United States*, WELFARE IN REV., May 1967, at 1, 5. They point out, however, that out-of-wedlock conception may have been equally common among whites as blacks, but more white women had married by the time of birth. See *id.*; see also SOLINGER, *supra* note 19, at 13-15.

21. Or, to use Denise Riley's terms, black women were "underfeminized" (that is, their maternal responsibilities were denied), while white women were "overfeminized" (reduced to their maternal responsibilities). See RILEY, *AM I THAT NAME?* (1988).

22. Black mothers also experienced discrimination in mothers' pension programs. See Joanne Lorraine Goodwin, *Gender, Politics and Welfare Reform: Mothers' Pensions in Chicago, 1900-1930*, at 283, 288 (1991) (unpublished Ph.D. dissertation, University of Michigan) (on file with Sarah Lawrence College).

23. See Handler, *supra* note 18, at 489-91.

nearly a billion in 1960).<sup>24</sup> In 1960 the Social Security Administration ruled that illegitimacy could no longer be considered grounds for rejecting AFDC applicants, opening the way for more blacks to receive benefits. By 1967 the proportions had shifted from fourteen percent non-white to forty-six percent non-white.<sup>25</sup> Seeking other ways to exclude blacks and non-married mothers (who were closely linked in the minds of many legislators) from receiving benefits, Congress hit upon the policy of workfare. In 1961 Representative Jamie Whitten, a conservative Democrat from Mississippi, introduced the first bill requiring welfare recipients to work.<sup>26</sup> While this bill failed to pass that year, it signaled a definite shift in Congressional mood, and the following year the first set of work requirements for ADC (now AFDC) recipients was passed as an amendment to the Social Security Act.

The 1962 amendment carried somewhat contradictory messages concerning mothers, fathers, and employment. On the one hand, it underlined conventional gender roles by exempting mothers of children under six from the work requirement and offering benefits to families with unemployed fathers so that the fathers could remain in the household. On the other hand, it granted money to the states in the form of block grants (to be matched by state funds) for childcare so that low-income mothers who were, had been, or might become welfare recipients, would be encouraged to find work outside the home. Though it stopped short of making work mandatory, this last provision did begin to erode the social contract that, since the Progressive Era, had at least rhetorically assured government support to women who remained at home to care for their children.

In his enthusiastic endorsement of the bill, Abraham Ribicoff, Kennedy's Secretary of HEW, clearly departed from the President's message to the childcare conference, which had been held only two years earlier. By fastening federal support for childcare to the goal of eliminating or reducing the need for public assistance, the measure represented a betrayal—or at least a significant narrowing—of Kennedy's more universal promise. At hearings on the bill, Ribicoff, using the catchwords of the day, emphasized the need for self-sufficiency and rehabilitation instead of relief.<sup>27</sup> Some childcare advocates

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24. U.S. DEP'T. OF HEALTH, EDUCATION AND WELFARE, *SOCIAL SECURITY PROGRAMS IN THE UNITED STATES* 96 (1968). The exact figures were \$133 million in 1940 and \$994 million in 1960. After 1960 the number of recipients rose even more steeply, from three million in 1960 to nine million in 1970, 10 million in 1971, and over 11 million by 1975. Thus the number tripled between 1960 and 1970; had the pace continued, there would have been 19 million recipients by 1980, but it actually began to level off in 1972 and even declined after 1975. See MILDRED REIN, *DILEMMAS OF WELFARE POLICY: WHY WORK STRATEGIES HAVEN'T WORKED* 3 (1982).

25. See MINK, *supra* note 17, at 182. The proportion of non-whites included both African-Americans and other people of color. Those who were still rebuffed now turned to the burgeoning civil rights movement for assistance with appeals and hearings, leading to a reversal in the racial balance among recipients.

26. See Michael K. Brown, *Race in the American Welfare State: Reflections on Social Policy Since the New Deal* (1995) (unpublished manuscript, on file with author).

27. See *Public Welfare Amendments of 1962: Hearings Before the House Comm. on Ways and Means*, 87th Cong. 63 (1962) (statement of Abraham Ribicoff) [hereinafter 1962 Hearings]. Ribicoff later conceded



believed that the bill, however limited, was valuable because at the very least it provided a vehicle for putting childcare on the federal agenda and gaining public funding for it.<sup>28</sup> Others, however, feared that the very existence of day care services might be used to pressure ADC mothers to take jobs. The latter group proved to be the more prescient: instead of opening the way to universal childcare, the 1962 amendments put federal welfare policy on the slippery slope toward workfare.<sup>29</sup>

Lawmakers claimed that the 1962 bill would *reduce* dependency by making recipients self-sufficient. Between 1961 and 1965, however, 1.3 million *new* recipients came on the rolls, doubling the rate of growth. Congress responded by tightening the work requirements. WIN, among other things, gave states the option of requiring mothers of children under six (or even under three) to be “referred” for job training or immediate employment if childcare was available. Childcare had to meet standards set by the Department of Health, Education and Welfare, but, as it turned out, these could be loosely interpreted if necessary.<sup>30</sup>

Support for these new measures was not universal. At hearings on the WIN program, both liberal and conservative social-welfare advocates expressed deep reservations about proposals for increasing work requirements for women. Conservative representatives from Catholic Charities objected that the measure would undermine male leadership of the family, while liberals argued that compulsory employment was unfair when no jobs were available and criticized efforts to save money at the expense of the welfare of families, especially children. Ruth Atkins of the National Council of Negro Women opposed coerced work and predicted that families would be forced into using poor childcare arrangements. She pointed to the irony that, under the terms of the bill, a woman who refused to leave her children in unsatisfactory conditions to enter a training program could then be labeled an unfit or unsuitable mother and penalized.<sup>31</sup>

Countering such arguments, members of Congress replied that there were safeguards: the work requirement for mothers was discretionary, and states were prohibited from implementing it without providing adequate childcare.<sup>32</sup> Support for the bill came from both liberal and conservative legislators, both of whom

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that he and his colleagues in the Kennedy administration were perhaps overly optimistic about the efficacy of rehabilitation programs. See ABRAHAM RIBICOFF, *AMERICA CAN MAKE IT!* 159-60 (1972).

28. See 1962 Hearings, *supra* note 27, at 416-19 (statement of Elinor Guggenheimer).

29. The bill called for \$5 million for childcare for the first year of implementation, \$10 million for each year thereafter, but only \$800,000 was appropriated for 1962 due to technicalities; in subsequent years Congress proved reluctant to appropriate the full authorized amount, allocating only \$3 million in 1963 and \$2 million in 1964. See CONGRESSIONAL QUARTERLY ALMANAC 1963, at 137 (1963); CONGRESSIONAL QUARTERLY ALMANAC 1964, at 183 (1964). The low appropriations undermined the bill's childcare provision which was, at least theoretically, one of its more positive aspects.

30. New Jersey, for example, set up separate standards for childcare for WIN children. See Monica Herk, *Helping the Hand that Rocks the Cradle* (1993) (unpublished Ph.D. dissertation, Princeton University) (on file with Princeton University).

31. See *Social Security Amendments of 1967: Hearings Before the Senate Committee on Finance*, 89th Cong. 1501-04 (1967).

32. See Herk, *supra* note 30.

believed that dire measures were needed to avert a perceived "crisis." Conservatives claimed that only punitive measures would reduce illegitimacy and alleged "welfare fraud," while liberals continued to argue that employment training and work programs would ultimately lead to self-sufficiency and an end to welfare.

One of the loudest voices on the liberal side was that of Martha Griffiths, a Democratic Representative from Michigan who saw herself as one of the few feminists in Congress. Griffiths was convinced that welfare mothers were willing to work, but she also insisted that in order to succeed, they needed training, childcare, and access to suitable employment. To welfare recipients, however, it was not at all obvious that employment was the best or only way out of the welfare dilemma. This became apparent in an exchange that occurred at hearings on an Income Maintenance Program in 1968 between Representative Griffiths and two officers of the newly formed National Welfare Rights Organization (NWRO), Beulah Sanders and George Wiley:

Mr. WILEY: Our feeling is that a good number, in fact the vast majority, of the welfare recipients and many of the other people who need income support legitimately should not be in the labor force because they have other important responsibilities at home [and have] to take care of their families. . . . It is an important question for many people, that they find jobs. But the important thing is that the men, that the people who are able to be heads of households or ought to be the legitimate heads of households be the ones that get those jobs. . . .

Rep. GRIFFITHS: Now, I regret to say, Mr. Wiley, you are speaking to the most dedicated feminist we have in Congress. I want to point out to you what I think the welfare program does. . . . [She goes on to explain her objection to the Labor Department policy of giving priority for job placements to the unemployed (namely, men) over welfare mothers.] You say that this work incentive program will be used to force mothers to work. . . . But if you do not say anything about mothers working, then [the Labor Department and welfare officials are] going to see to it that none work. . . . And in my opinion, this is wrong. . . . [Y]ou are going to consign the women to welfare. I just do not think that is fair. I am a woman, Mr. Wiley, and I know the kinds of discriminations that have been used against women. . . .

Mrs. SANDERS: One of the things we are concerned about is being forced into these non-existing positions which might be going out and cleaning Mrs. A's kitchen. I am not going to do that because I feel I am more valuable and can do something else. This is one of the things people are worrying about, that they are going to be pushed into doing housework when they can be much more valuable doing something else. But they do not have the training, they do not have the experience, they do not have the college degree. . . . We have children, small children that we have no day care facilities for. We have nobody to leave our kids with that we can feel that if we go to work, our kids are going to be taken care of properly.<sup>33</sup>

While Representative Griffiths was no doubt accurate in criticizing the Labor Department for discrimination against women, her position overall rested on misplaced optimism about labor force participation and its benefits for women, particularly where African-Americans were concerned. As Sanders and Wiley attempted to point out, for black mothers, employment was hardly "liberating" and in fact usually led to further exploitation and hardship.

Problematic as these bills were, they did contain provisions which, properly implemented, in theory might have allowed some AFDC recipients to participate in training and find jobs with the assurance that their children were receiving adequate care. In practice, however, the WIN program did not deliver. Part of the problem had to do with erratic administration and funding. Many states dragged their feet in establishing training programs and were even slower in setting up the childcare that was necessary before women could be "referred."<sup>34</sup> Even when services were in place, local welfare officials were often reluctant to refer, for maternal employment did not sit well with their maternalist/paternalist views of gender roles.<sup>35</sup> The combination of the threat of benefit loss on the one hand and conservative attitudes on the other left AFDC mothers at mercy of local authorities. Neither the punitive nor the so-called protective aspects of the 1960s legislation were conducive to giving these women the choice or the wherewithal to establish themselves in a labor force that was in any case inhospitable toward them.

The late 1960s did see some efforts to address women's particular needs in a more positive—and universal—way. In 1968 and 1969, Congress held its first hearings on bills to expand and improve childcare programs which were *not* coupled to welfare. These bills, which called for federal funding to expand the supply of day care centers and enhance their *educational* benefits, ultimately

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33. *Income Maintenance Programs: Hearings Before the Subcomm. on Fiscal Policy of the Joint Economic Comm.*, 90th Cong. 77 (1968).

34. See Herk, *supra* note 30.

35. See Joel F. Handler & Ellen Jane Hollingsworth, *Work, Welfare, and the Nixon Reform Proposals*, 22 STAN. L. REV. 907 (1970).

formed the basis for the Comprehensive Child Development Act of 1971, which passed both houses of Congress but was vetoed by President Nixon.

The reasons for Nixon's veto are complex. There is considerable evidence that, in the wake of the Supreme Court's decision to require busing to achieve integration in public schools, there was widespread fear about creating a public service that would mix the races at an even earlier age.<sup>36</sup> This blatantly racist motivation was, however, masked in Nixon's veto message, which drew on more acceptable Cold War rhetoric about the need to preserve the American family and fueled latent conservative opposition to increasing government services. The conservative mood prevailed throughout the 1970s, barring subsequent efforts to introduce modified childcare legislation.

By contrast, policies linking childcare to the poor (and thus implicitly guaranteeing continuing racial segregation) gained momentum. In 1974 Congress passed Title XX of the Social Security Act,<sup>37</sup> which targeted childcare to workfare and "at-risk" populations, and in 1975, through the Aid to Day Care Centers Act, it increased funding in order to raise standards in public day care centers (while deferring implementation of those standards), and encouraged the creation of childcare jobs for low-income women.<sup>38</sup> Both of these bills had ambiguous effects on the supply of childcare and its effects on poverty reduction. Under Title XX, the federal government funded state agencies on a three to one basis to provide services to low and moderate-income families to "achieve or maintain economic self-support to prevent, reduce, or eliminate dependency."<sup>39</sup> States were required to dedicate half the services to individuals in welfare-related categories, but the other fifty percent could go to families earning as much as 115% (states could opt for a lower maximum) of the state median, who would pay for a service such as childcare on a sliding scale. In practice, most states set their maximum lower—at or below eighty percent—thus denying benefits to families who, though above the poverty line, could nonetheless ill afford to pay the full cost of childcare. This either forced families to place children in cheaper but probably lower-quality childcare or discouraged them from increasing their incomes unless the gains were great enough to offset lost eligibility for subsidized services. In many two-parent families, this served as a disincentive to wives' employment.<sup>40</sup>

Title XX also denied parents a choice of childcare provisions. Most states contracted with specific providers for Title XX slots, usually concentrating on

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36. See Kimberly Morgan, *Race and the Politics of American Child Care* (Feb. 1, 1997) (unpublished manuscript, on file with author) (containing an excellent discussion of the racial aspects of the childcare issue).

37. See 42 U.S.C. §§ 1397-1397f (1996).

38. See Act of Jan. 4, 1975, Pub. L. No. 93-647, § 3(f), 88 Stat. 2349, *repealed by* Act of Aug. 13, 1981, Pub. L. No. 97-35, § 2353(s), 97 Stat. 874.

39. 42 U.S.C. §1397(1) (1996).

40. In such cases, moving into a higher-paying job would result in either no gain or a loss, depending on how great the pay increase was in relation to childcare costs. See U.S. COMM'N ON CIVIL RIGHTS, CHILD CARE AND EQUAL OPPORTUNITY FOR WOMEN 19-20 (Clearinghouse Pub. No.67, 1981).

either center-based or family-based care. Families deemed eligible for slots had to take what was available, regardless of their own preferences as to type. Only a few states allowed parents to choose freely.<sup>41</sup> Low-income mothers who did not feel comfortable with the available choices—whether they were centers or family providers—were reluctant to place their children in care. On the other hand, they could not make use of their preferred type of care if subsidized slots were not available.<sup>42</sup>

The Aid to Day Care Centers Act, signed reluctantly by President Ford after he had vetoed an earlier bill, increased Title XX funding to allow states to improve childcare services and come into compliance with the Federal Interagency Day Care Requirements (FIDCR). Implementation of FIDCR, which had engendered much controversy and resistance from conservatives, had been postponed several times since the regulations were first introduced in the late 1960s. In the compromise which allowed final passage of the bill, implementation was postponed once again, though the extra funds remained. Congress neglected, however, to include a “maintenance of effort clause,” with the result that states simply substituted new money for old, diverting matching funds previously used for childcare to other social services. Thus the new funding did little or nothing to expand or improve the supply of childcare.<sup>43</sup>

Title XX-funded childcare was, however, an important component of the growing federal effort to move welfare mothers into employment. Both the WIN program, which was specifically targeted at AFDC recipients, and CETA (Comprehensive Employment and Training Act), which passed in 1973, permitted a portion of the funds available for support services to be used for childcare, but left it up to local discretion. Some administrators chose to do so; others did not, even though regulations barred mothers from entering work or training if childcare arrangements were not in place. Many administrators relied on Title XX-funded provisions to take up the slack.

In 1979 CETA regulations were tightened in an effort to compel local sponsors to provide childcare; the rationale was that without it, women were denied equal opportunity in the program. Local sponsors, however, took advantage of the program’s inherent flexibility to circumvent these regulations, either by failing to make provisions, refusing to accept applicants who required childcare, or, at best, providing only limited services which would be cut off

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41. *See id.* at 20.

42. A study of low-income black families in South Central Los Angeles in the mid-1970s found that while there was generally a shortage of childcare in the area, many daycare slots went unfilled because they were not subsidized and parents could not afford them. Parents tended to prefer center-provided care when it was affordable, but subsidized slots in centers were in short supply. Some high-cost centers with few or no subsidized slots had to close due to under-enrollment. Many family daycare slots went unfilled because parents preferred centers and also because they were not subsidized. *See* Karen Hill-Scott, *Child Care in the Black Community*, 10 J. BLACK STUD. 78 (1970).

43. *See* ALFRED J. KAHN & SHEILA B. KAMERMAN, *CHILD CARE: FACING THE HARD CHOICES* 20-22 (1987).

soon after a mother entered paid employment.<sup>44</sup> These mothers were generally still eligible for Title XX slots, if available, but they often had to compete with other women who were at an even greater disadvantage—namely, those who were still in training programs and had not yet gotten jobs.

In the early eighties, already scarce childcare resources for low-income women shrank still further as a result of cuts by the Reagan administration, and the quality of these provisions was severely compromised. Under the Omnibus Budget Reconciliation of 1981, Title XX was transformed into a block grant and funding was cut by twenty percent. Total funding was reduced still further by elimination of the state matching requirement. At the same time, the amount of childcare expenses AFDC recipients could deduct was capped at \$160 per month.<sup>45</sup> The following year, CETA was replaced by the Job Training Partnership Act, which authorized less funding for support services, including childcare.<sup>46</sup> Between 1980 and 1986, these cuts produced major reductions in almost all categories of federal spending for childcare for low-income families (see Table 1).<sup>47</sup>

Transformation of Title XX into a block grant also eliminated the Federal Interagency Day Care Requirements (FIDCR) for all childcare providers receiving Title XX funding. After years of wrangling, these requirements had finally been put into effect in 1980. Because they had been under discussion for so long, however, they had already begun to take hold. A 1981 government report found that most states were, in fact, meeting or close to meeting the standards for their Title XX facilities. Moreover, private, non-Title XX funded facilities were also adhering to the standards because they were "emerging as the preferred norm."<sup>48</sup>

With the elimination of FIDCR, pressure to conform dissipated rapidly. This, coupled with funding decreases, reduced both the supply and quality of childcare for low-income families while raising its cost to all consumers. According to a Children's Defense Fund study of changes between 1981 and 1983, thirty-two states provided less Title XX childcare in 1983 than in 1981, some cutting more than the federal expenditure reduction required.<sup>49</sup> In ten states, eligibility for low-income working families decreased.<sup>50</sup> Twenty states made eligibility more difficult for low-income mothers in training programs.<sup>51</sup> Many low-income working families were cut from the AFDC rolls, and in a number of states they

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44. See U.S. COMM'N ON CIVIL RIGHTS, *supra* note 40, at 31.

45. See KAHN & KAMERMAN, *supra* note 43, at 19-22.

46. JPTA was also less favorable to women than CETA in terms of its effectiveness in training them for good (that is, well-paying) jobs. See Sharon L. Harlan, *Women and Federal Job Training Policy*, in *JOB TRAINING* 55, 73-82 (Sharon L. Harlan & Ronnie J. Steinberg eds., 1989).

47. Exceptions were Head Start spending, which increased by about 50%, and the childcare food program, which nearly doubled. Neither of these, however, affected the supply of affordable childcare.

48. See KAHN & KAMERMAN, *supra* note 43 at 19-22.

49. See HELEN BLANK, *CHILDREN AND FEDERAL CHILD CARE CUTS* 5 (1983).

50. See *id.*

51. See *id.*

therefore became ineligible for *any* publicly supported day care.<sup>52</sup> Nineteen states imposed or increased fees for Title XX day care.<sup>53</sup> States had to choose between childcare for children at risk of abuse and childcare for children from low-income working families.<sup>54</sup> Twenty-four states reduced funds for training childcare staff, thirty-three lowered their child-care standards, and thirty-two cut back on the number of staff.<sup>55</sup> Ten states shifted from providing childcare through Title XX to using AFDC's Title IV-A Childcare Disregard program, which had lower standards and forced poor families to pay more for care.<sup>56</sup>

*Table 1*

Federal Expenditures for Childcare,  
Fiscal Years 1980 and 1986<sup>57</sup>

<i>Programs</i>	<i>Expenditure in Millions of Dollars</i>	
	1980	1986
Title XX	\$600	\$387
Head Start	766	1,040
AFDC Disregard (Title IV-A)	120	35
Child Care Food Program	239	501
Title IV-C (WIN)	115	0
ARC (Appalachian Regional Commission)		
Child Development	11	1
Employer Provided Child Care	0	110
Dependent Care Tax Credit	956	3,410
Total	2,807	5,484
Total Without Tax Credit	1,851	2,074

As these data indicate, the overall impact of Reagan-era cuts in spending for public childcare was devastating. For low-income and welfare mothers, inadequate childcare, coupled with erratic and poorly paying job opportunities and discrimination in job training programs, meant that it was extremely difficult to become or remain self-sufficient. This, in turn, caused welfare rolls and expenditures to swell, leading to Congressional impatience with AFDC. Thus when the issue of support for childcare again appeared on the federal agenda in the late 1980s, the situation (and many of the personnel) was similar to that which prevailed in the early 1970s: On the one hand, there were forces seeking

52. *See id.*

53. *See id.* at 6.

54. *See id.*

55. *See id.* at 7.

56. *See id.*

57. KAHN & KAMERMAN, *supra* note 43, at 19 tbl.1.8 (citations omitted).

universal provisions, while on the other, there were those who could only countenance public funding for childcare that was linked to welfare reform. Until 1991, nearly all other sources of federal support for childcare were in some way linked to welfare and/or "at-risk" populations.

Lack of federal support for universal childcare has meant that the supply of public services has failed to keep pace with the growing numbers of women in the workforce, making it more difficult, not easier, for them to become and remain self-sufficient. Moreover, though Congress has often revisited the issue of workfare, it has failed to address endemic and persistent problems such as ineffective and irrelevant training programs, the shortage of quality childcare, or, most basic, a shortage of jobs for women paying decent wages. Instead, in a remarkable display of legislative amnesia, Congress has repeatedly sought to tighten workfare programs by expanding the class of "eligibles" and increasing sanctions for those who fail to find jobs. Though the Family Support Act of 1988, which set precise goals for employment participation and granted a great deal of latitude to the states, failed dramatically, Congress and the President saw fit to reproduce and expand that model in the recently passed Personal Responsibility and Work Opportunity Reconciliation Act.<sup>58</sup> This legislation, as is widely known, makes employment requirements for welfare recipients even more stringent, using childcare provisions as a bludgeon, not an incentive, in the process. Policy-makers at every level seem further from condoning universal childcare than at any point in our history; instead of being an entitlement of social citizenship for women and an aid to choice regarding employment, childcare has become part of a harsh program of mandatory labor that places women, simply by virtue of their status as poor mothers, at the mercy of a punitive state.

#### CHILDCARE IN THE PRIVATE SECTOR

##### *The First Phase*

Motives for establishing childcare in the private sector appear very different, at least on the surface. Corporate or employer-supported childcare, in particular, was and is very much linked to choice; for the most part, it has been created as an inducement to bring women into the labor force. In this sense—at least at first glimpse—corporate childcare might be said to enhance women's social citizenship. I shall return to this claim after looking more closely at the ways in which corporate childcare has developed and what resources it offers to wage-earning mothers.

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58. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (amending scattered sections of 42 U.S.C.).



Though the logic of private-sector childcare has, for the most part, been distinct from that of public-sector policy, there is also conjuncture between the two sectors at the points where the state has urged or offered incentives to corporations to take responsibility for offering services that the federal government was not systematically providing.<sup>59</sup> From the 1960s through the 1990s, the number of employer-supported childcare programs has risen from fewer than 200, serving about 6000 children, to 5600, serving perhaps half a million youngsters.<sup>60</sup> This undertaking expanded the scope of the American welfare state (broadly conceived to include both public and private social provision).

Prior to the 1960s, there were a few experiments in employer-sponsored childcare, the most notable being the Kaiser Child Service Centers established at the Kaiser Shipyards in Portland, Oregon during World War II.<sup>61</sup> Privately run but sponsored with government funds, these centers set high standards for childcare in any era, but they did not, unfortunately, serve as precedents for future childcare policy, either public or private. The more immediate precedent for today's employer-supported services can be found in the early 1950s, when hospitals across the nation, faced with a severe shortage of nurses, began to set up on-site childcare facilities. Surveys by hospital managers revealed that while nurses were being trained in adequate numbers, many were lost to the profession after they married and had children.<sup>62</sup> Nursing administrators realized that motherhood had de facto become an obstacle to further practice because nurses could not find adequate care for their children.<sup>63</sup> The obvious solution was for hospitals themselves to provide services.<sup>64</sup> Hospital-based childcare, enjoying its

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59. See Beth Stevens, *Blurring the Boundaries: How the Federal Government Has Influenced Welfare Benefits in the Private Sector*, in *THE POLITICS OF SOCIAL POLICY IN THE UNITED STATES* 123 (Margaret Weir et al. eds., 1988); Nelson Lichtenstein, *Labor in the Truman Era*, in *THE TRUMAN PRESIDENCY* 148 (Michael Lacey ed., 1989); Frank R. Dobbin, *The Origins of Private Social Insurance: Public Policy and Fringe Benefits in America, 1920-1950*, 97 *AM. J. SOC.* 1416 (1992). While Stevens and Lichtenstein emphasize the role of organized labor in winning fringe benefits, Dobbin stresses the importance of the "policy environment" (which I take to mean the state). Compare Stevens, *supra*, at 134-42, and Lichtenstein, *supra*, with Dobbin, *supra*, at 1445-47.

60. These programs include childcare centers, both on and off-site, voucher plans, after-school activities, and other schemes whose evolution will be discussed below. In 1991, more than 57% of children younger than five whose mothers were employed and who were not cared for by a parent during working hours were either in family childcare homes or childcare centers. The percentages of children in each category were as follows: 32.9% with relatives, 32.3% in childcare centers, 25.1% in family childcare homes, 7.5% with unrelated caregivers in the home, and 2.2% with "other." Because of the variety, it is difficult to calculate the total number of children being served at any one time. See CHILDREN'S DEFENSE FUND, *THE STATE OF AMERICA'S CHILDREN YEARBOOK* 1995, at 39 (1995).

61. See AMY KESSELMAN, *FLEETING OPPORTUNITIES: WOMEN SHIPYARD WORKERS IN PORTLAND AND VANCOUVER DURING WORLD WAR II AND RECONVERSION*, at 74-79 (1990).

62. See Dorothy E. Reese et al., *The Inactive Nurse*, *AM. J. NURSING*, Nov. 1964, at 125.

63. There was in general a scarcity of childcare facilities during this period, and there was also a dearth of regulation and of trained personnel. See WOMEN'S BUREAU, U.S. DEP'T. OF LABOR, PUB. NO. 246 (1953).

64. Some of the earliest examples were in New Jersey, Ohio, and Tennessee. See Susan Rimby Leighow, *An "Obligation to Participate": Married Nurses' Labor Force Participation in the 1950s*, in NOT JUNE CLEAVER: *WOMEN AND GENDER IN POSTWAR AMERICA, 1945-1960*, at 37, 48-49 (Joanne Meyerowitz ed., 1994).

"start-up" advantage and sustained by the ongoing need for skilled nurses, became (and has remained) the predominant form of employer-sponsored care.<sup>65</sup>

Outside of hospitals, employer-supported childcare programs developed in two phases. In the late 1960s and early 1970s, they went through an experimental or exploratory period that fizzled rather quickly. After a brief hiatus, a more sustained and expansive phase started up in the early 1980s, continuing to the present.<sup>66</sup> A number of major firms were involved in the first phase, including the Control Data Corporation in Minneapolis, the Polaroid Corporation in Cambridge, the Chesapeake & Potomac Telephone Company in Washington, D.C., and the Bell Telephone Company in Chicago.<sup>67</sup> It was estimated that over 400 colleges and universities also offered some form of childcare.<sup>68</sup>

While educational institutions gave preference to the children of students rather than staff, commercial firms focused on the needs of female employees, an increasing proportion of whom were mothers of young children.<sup>69</sup> By 1970, women comprised nearly forty percent of the labor force, twice their number in 1940. Of the 31 million women at work, 12.2 million had children, nearly half of them under the age of six.<sup>70</sup> Recruitment of women, including mothers, was especially intense in growth industries such as service, electronics, and light manufacturing. Once hired, however, these new workers came to be perceived as problematic. Employers were quick to attribute increases in rates of absenteeism and turnover to women's difficulties in combining work with domestic responsibilities.<sup>71</sup> In earlier periods, employers had avoided this problem simply by insisting that potential employees have childcare arrangements well in hand or by refusing to hire mothers in the first place.<sup>72</sup> Now, however, many employers did not have that choice. In specific economic sectors and geographic areas, labor shortages compelled employers to hire women no matter what their family status. But there was also a severe shortage of childcare slots; according to one survey, existing centers had a capacity for only 625,000 children—slightly

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65. By 1977, there were between 150-200 existing employer-supported day care facilities, over half of them linked to hospitals, health care facilities or non-profit organizations. See David Robison, *Working Parents Choose Home-Based Child Care Arrangements*, WORLD OF WORK REP., Feb. 1977, at 13, 20. This trend continued; a 1984 survey of U.S. companies found that firms in the health care industry had the highest rate of involvement in providing child care, including the most on-site facilities. See Karen Krett, *Maternity, Paternity and Child Care Policies*, PERSONNEL ADMIN., June 1985, at 125, 136.

66. See Sonya Michel, *The Corporate Cradle* (Nov. 1995) (unpublished manuscript, on file with author).

67. *Latest Benefit to Employees—Day Care for their Children*, U.S. NEWS & WORLD REP., Dec. 11, 1972, at 64, 64-66 [hereinafter *Latest Benefit*].

68. See *id.* at 65.

69. Many university-based centers were also used as laboratories for educational research and training.

70. See *Latest Benefit*, *supra* note 67, at 64.

71. See *id.*

72. The 1953 Women's Bureau study found, for example, that employers in Dallas insisted that mothers make arrangements with relatives or neighbors, not childcare centers, since centers, with their strict health requirements, would refuse to take children who were sick and would compel mothers to take an absence from work. See WOMEN'S BUREAU, *supra* note 63, at 78.

more than ten percent of those with working mothers.<sup>73</sup> Like hospital administrators before them, commercial employers began to see the value of setting up their own programs.

The federal government offered businesses several different types of aid. Through Title IV-A of the Social Security Act (the "workfare" legislation), business firms could obtain funds for childcare for employees who were *low-income* mothers and those who were welfare recipients. This source was quite lucrative, for the government matched employer dollars at a three to one ratio.<sup>74</sup>

One of the best-known projects based on this type of funding was located in Minneapolis, where a firm called Control Data joined with five other companies to form Northside Child Development, Inc. The large Northside center gave preference to employees of the participating companies but also accepted outside children. With a capacity for 120 children, it became the largest employer-supported facility in the United States of the early 1970s.

The Northside consortium arose rather serendipitously as the result of a business projection gone awry. Control Data originally intended to run its own on-site center, based on executive Gary Lohn's assessment that the reason for high turnover and absenteeism among his plant's female employees (many of whom were single heads of households) was lack of childcare. A large center was planned, but soon after it opened in 1970, a recession in the computer industry curtailed hiring at Control Data and enrollment at the Center fell to 12 children. Reluctant to abandon the project because it facilitated employment for a population of chronically low-income female workers, Lohn turned to other Minneapolis firms and soon found five willing to join a childcare consortium: Dayton-Hudson Department Store, Lutheran Brotherhood Insurance, Northwestern Bell, Northwestern States Power, and Pillsbury. The six companies created a non-profit organization and applied for federal funds. According to one report, "[b]y August 1971, the center had evolved from a private facility to a quasi-public one," and enrollment had increased sharply, drawing children from the local community as well as consortium employees' families.<sup>75</sup>

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73. See MARY DUBLIN KEYSERLING, *WINDOWS ON DAY CARE 3* (1972), reprinted in *Rights of Children, 1972: Hearing Before the Subcomm. on Children and Youth of the Sen. Comm. on Labor and Public Welfare*, Part 2, 92nd Cong. 569 (1972) [hereinafter *Rights of Children*].

74. Title IV-A was amended twice in the mid-sixties; the second time, with the institution of the WIN (Work Incentive) Program, states could require mothers of children under six to find work, provided child care was available. See Act of Jan. 2, 1968, §204, Pub. L. No. 90-248, 81 Stat. 884. Under the Talmadge Amendment of 1973 (so-called "WIN II"), work requirements were tightened still further, but federal funding was upped to 90%. See Act of Dec. 28, 1971, Pub. L. No. 92-223, 85 Stat. 806; see also Sonya Michel, *From Welfare to Workfare: The Paradigm Shifts of the 1960s* (Nov. 1995) (unpublished manuscript, on file with author).

75. *Northside Child Care Center Prospers with Business Know-How*, *WORLD OF WORK REP.*, Feb. 1977, at 14, 15. The Northside project both reflected and contributed to an overall predisposition toward civic responsibility on the part of business firms in the Twin Cities that seemed to prevail in the 1970s and 1980s. "The most important things in this city have happened at the initiative of the business community, not because of government," Minneapolis mayor Donald M. Fraser told the *New York Times*. Kathleen Teltsch, *Corporate Aid Helping Twin Cities to Thrive*, *N.Y. TIMES*, July 27, 1981, at A1.

Employers who were not in a position to hire low-income women, most of whom were also low-skilled, could take advantage of a tax write-off for childcare expenses. A landmark 1973 Internal Revenue Service ruling stipulated that the expense was justified if the purpose of a center or program was "(1) to provide an employee with a place to send his or her child while at work knowing that the child is receiving proper care, (2) to reduce absenteeism, increase productivity, and reduce company training costs, and (3) to reduce employee turnover. . . ."<sup>76</sup> In addition, the Small Business Administration offered loans to cover start-up costs as well as lease guarantees, and the Department of Agriculture provided funding for lunches.<sup>77</sup>

In the early 1970s, the annual cost of full-time center-based care could run from \$1100 to \$2000 per child. Parent fees usually covered only a portion of the cost, with employers absorbing the rest. In making their calculations, employers also figured in other expenses. Where there was heavy investment in plant and equipment as well as tight production schedules, for example, employee turnover could be very costly. A modest investment in childcare could lower turnover and increase productivity. Government subsidies could ease the burden considerably.<sup>78</sup>

It should be noted, however, that the way government aid was set up, the initiative was all on the side of the *employer*; each firm could decide whether or not it wanted to create some sort of childcare program—a decision which was, in turn, based on whether or not it wanted to attract female employees. Businesses were under no compunction to offer universal care. (At the same time, as noted above, with the failure of the 1971 Comprehensive Child Development Act, there was no direct federal support for universal childcare that was *not* tied to either welfare or business initiatives.)

What did employer-supported childcare look like? The most visible form was the on-site childcare center. Often architect-designed, such a facility could serve as an emblem of corporate enlightenment. Some sponsoring companies operated their centers directly while others hired outside professionals or contracted with operators. No matter what the arrangement, company publicity materials touted their centers' emphasis on children's development, nutrition and health.

Though on-site centers attracted a good deal of attention (due partly to their novelty, partly to the efforts of corporate public relations departments), they were

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76. Rev. Rul. 73-348, 1973-2 C.B. 31; see also Belle Canon, *Child Care Where You Work*, MS., Apr. 1978, at 85.

77. See WOMEN'S BUREAU, U.S. DEP'T. OF LABOR, FEDERAL FUNDS FOR DAY CARE PROJECTS 60-72 (1969). During the 1960s different types of funding were also available through the Model Cities program and the Office of Economic Opportunity. See *id.* at 15-59.

78. For instance, in 1972, the owner of a million-dollar paper processing plant in Pennsylvania feared that his new factory would begin to mold unless he could find a dependable labor force, but his low-wage female workers could not locate affordable child care. His on-site child care center proved so successful in lowering absenteeism and turnover that he decided he could provide *free* care for 35 children and still turn a profit. See Anne Lorimer, *For Companies with Day Care, Big Dividends*, PHILADELPHIA INQUIRER, Jan. 31, 1982, at 1-L, 8-L.

by no means the only or even the most common form of employer-supported childcare. Other firms preferred to reserve slots for their employees in outside facilities which they subsidized either individually or as part of a corporate consortium. Subsidies consisted of expert services (such as accounting) as well as cash. Many companies believed that while it was incumbent upon them to support childcare, operating a center, even with trained professionals on staff, lay outside their realm of expertise. Such companies preferred to take an indirect approach. This could range from setting up "information and referral" services—sometimes nothing more than a list of local providers—to arranging for group discounts at a nearby independent facility.

Some forms of indirect support, like information and referral services or cooperative arrangements, cost the company little or nothing. Others, however, might be just as expensive as setting up an on-site facility. Polaroid, for example, offered childcare vouchers whose value depended on the employee's salary and total household income, the size of her family, and the cost of the childcare. Employees could choose where to send their children, but each facility had to be licensed and company-approved, with certified teachers. According to Polaroid's community-relations administrator, "We require quality centers—not just baby warehouses."<sup>79</sup>

By the mid-1970s, the initial wave of enthusiasm for employer-supported services subsided, and management undertook a more sober assessment of its policies. Few companies turned out to be as committed to childcare as Control Data, or as flexible and resourceful in finding new ways to pursue their goals when initial plans fell through. As a result, many on-site programs were terminated or converted into public services no longer supported by business. Some small on-site centers, such as the ones run by Stride Rite in Boston and Connecticut General Life Insurance in Hartford, as well as the Polaroid voucher program, remained in operation, while Control Data's center continued in its new, government-subsidized form. As of 1976, it was estimated, the number of employer-supported programs, including centers, had stabilized at about 150-200, still serving only about 6000 children. More than half of these programs were sponsored by hospitals or other health care or non-profit institutions.<sup>80</sup>

Despite much fanfare and substantial investment in plant, equipment, and personnel on the companies' part, many of the new on-site facilities simply failed to attract substantial numbers of families. Under-utilization not only disappointed corporate planners but created financial difficulties. While most companies were willing to subsidize their facilities to a certain extent (often, as we have seen, with the help of the government), they expected parent fees to pick up at least part of the expense. Fewer children meant less outside revenue, both from parents and from the government, and this shortfall, in combination with

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79. *Latest Benefit*, *supra* note 67, at 66.

80. See Robison, *supra* note 65, at 13, 20.

continuing absenteeism and turnover, convinced many employers that supporting childcare was not cost-effective after all.<sup>81</sup>

Some of the resistance might have been predicted, had managers bothered to conduct inquiries before embarking on their various programs. Most, however, simply assumed that childcare was what was needed and, without bothering to assess employee preferences or practices, plunged ahead to create it. At the same time, employees themselves provided little direct indication of what they wanted. For one thing, they lacked appropriate channels for expressing their views. The majority of mothers targeted by first-phase corporate-based services were blue-collar, clerical, and service workers who, for the most part, were not represented by unions or were not mobilized in any other way.<sup>82</sup> (The one exception was clothing and textile workers, whose own union, the Amalgamated Clothing and Textile Workers' Union (ACTWU), responded to the need for childcare by setting up its own centers, the first one in Virginia in 1968, followed by others in Maryland, Illinois, and Pennsylvania.<sup>83</sup>) Second-phase efforts were, as we shall see, more successful in building an employee clientele, in part because they were created *in response to* employee demands, not simply imposed from above. Indeed, some companies even used complicated "sensing" techniques to determine what employees actually wanted, thus relieving them of the burden of making demands on their own behalf (and avoiding possible employee mobilization).<sup>84</sup>

All told, by the mid-1970s, employer-supported services could account for only a tiny proportion of the childcare provisions used by the more than six million children who had working mothers. Nearly one million were enrolled in voluntary or commercial (but not employer-sponsored) centers, while the remainder received care at home or in private family-care settings. In its initial phase, corporate childcare was hampered by a relatively low level of employer initiative as well as resistance on the part of its potential clientele. To a certain degree, corporate policy was determined by state policy, though incentives to corporations were effective only insofar as they coincided with corporations' own business objectives—that is, when it was in their interest to hire women. This was particularly true when it came to tapping the pool of low-income women targeted by Title IV workfare subsidies.

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81. *See id.*

82. Unions for the most part ignored female workers and/or failed to organize the sectors in which female workers predominated until the late 70s and early 80s. *See* CLAUDIA GOLDIN, UNDERSTANDING THE GENDER GAP: AN ECONOMIC HISTORY OF AMERICAN WOMEN 210 (1990); TERESA AMOTT & JULIE MATTHAEI, RACE, GENDER AND WORK: A MULTICULTURAL ECONOMIC HISTORY OF WOMEN IN THE UNITED STATES 89, 117, 130 (1991).

83. *See* Canon, *supra* note 76, at 86. As a result of collective bargaining, the ACTWU centers received partial support from employers. *See also* REPORT OF A CONSULTATION ON WORKING WOMEN AND DAY CARE NEEDS 54-56 (1967) (containing an address by Samuel Nocella, International Vice President of the ACTWU).

84. *See* Jacquelyn McCroskey, *Work and Families: What is the Employer's Responsibility?*, 61 PERSONNEL J. 30, 32-33 (1982).

*The Second Phase*

The second phase of corporate childcare development, which began in the late 1970s, was marked by even greater divergence between public-sector and private-sector policies. While federal policy continued to link childcare provision with welfare as it sought to move unskilled women from welfare to work, corporate policy increasingly focused on the needs and demands of upper-level employees—management and skilled technicians.

This resurgence of corporate interest in childcare had multiple sources. In part it arose from the women's liberation movement, which more than ever before framed childcare as a feminist issue and claimed to speak for working mothers.<sup>85</sup> Though the women's movement undoubtedly broke the ice, it was *individual* women in high-level positions who ultimately brought the issue home to employers. By 1980 the efforts of the EEOC were beginning to show results and the gender profile of the American labor force was changing. Occupational segregation and the concentration of women in the service sector were declining, while the proportion of women in the professions, management, and sales was on the upswing.<sup>86</sup> According to the *Wall Street Journal*, "far more career-minded women have joined the work force, and day-care demand is stronger than ever."<sup>87</sup> Though few women had risen high enough in the corporate ranks to begin worrying about hitting the "glass ceiling," many felt sufficiently confident of their market value to seek accommodations such as maternity leave and childcare without fear of being stigmatized, marginalized, or dismissed outright. As one Harvard Business School graduate put it to a recruiter from Corning Glass Works, "What's your company going to do about my two-year-old daughter?"<sup>88</sup>

This woman was not overestimating her worth in the corporate world. In sectors that were suffering from severe labor shortages, such as high technology, employers were more than willing to accommodate women's demands. A spokesman for Wang Laboratories in Lowell, Massachusetts, conceded, "We have women in highly-skilled positions. . . . These are one-of-a-kind people."<sup>89</sup> To retain such employees, Wang invested \$150,000 in its on-site childcare center in 1981—three-fifths of the program's annual budget. Parent fees made up the remainder of the cost (twenty-five dollars per week for Wang employees, fifty

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85. Feminists addressed many of their demands toward the federal government and also began to criticize labor unions for failing to take up the issue. According to Muriel Tuteur, director of ACTWU's Chicago childcare center and a member of the Coalition of Labor Union Women (CLUW), childcare was not a "gut issue" for male union leaders. "[U]ntil women take hold of that issue," Tuteur told a *New York Times* reporter, "we are not going to see a heck of a lot happen." *Better Child Care Urged As a Support to Family*, N.Y. TIMES, Nov. 20, 1979, at B11.

86. GOLDIN, *supra* note 82, at 74-75.

87. Liz Roman Gallese, *Moms and Pops Get Break as Employers Sponsor Day Care*, WALL ST. J., May 9, 1980, at 17.

88. *Id.*

89. *Id.*

dollars for non-Wang personnel). In general, women made the most gains in personnel-intensive industries, particularly where their talents or skills were perceived as unique. On-site childcare also continued to be viewed as the best means of retaining nurses.<sup>90</sup>

Employers' renewed interest in sponsoring childcare was based on a simple calculation: It was cheaper to support childcare than to train fresh cohorts of new employees for high-level managerial and technical positions. In 1979, Union Fidelity Insurance, a Pennsylvania firm, started an on-site childcare center when it was threatened with the departure of five key executives who had all become pregnant simultaneously.<sup>91</sup> With training for some positions running as high as \$100,000 per employee, executives readily concluded that it was less expensive to provide childcare and allow innovations such as flexible hours and job sharing than to risk turnover by rigidly adhering to work rules and conditions that had been codified in the days when managers were nearly all male and depended on non-wage-earning wives to shoulder all family responsibilities.

Some observers attributed the prevalence of enlightened personnel policies to the ascent into management of veterans of the 1960s, with their more "people-oriented approach." While benevolence and concern may have motivated some employers to offer childcare and other family-related services, even more believed that it was necessary to offer attractive benefits packages in order to recruit and retain the most desirable personnel. In the competition for recruitment prizes, however, managers sometimes made serious errors of judgment and ended up offering benefits that were inappropriate, untenable, or wasteful. In 1982, childcare consultant Jacquelyn McCroskey cautioned, "far too many employers make the decision to invest in a family-oriented benefits program just because someone else is doing it."<sup>92</sup> McCroskey advised companies to spend time surveying employees' needs and developing a comprehensive framework through which to relate proposed benefits to overall policies, before proceeding to the point of actually setting up and offering specific benefits and services.<sup>93</sup>

Consultants such as McCroskey were much sought-after during the early 1980s, as companies sought guidance in planning and setting up benefits and services for their employees. Over 200 representatives of hospitals, government

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90. One hospital administrator, for example, concluded that it was less expensive to sponsor child care than have to recruit nurses on an ongoing basis. "Why should I spend \$150,000 advertising throughout the country for nurses, when I can spend \$50,000 underwriting the center to take care of their kids?" asked Joe DiLorenzo, administrator of the Park View Hospital in Nashville. Paul B. Brown, *Band-Aids by the Boxcar*, FORBES, Aug. 31, 1981, at 88.

91. See Lorimer, *supra* note 78, at 1-L. One Boston bank was not so fortunate: in 1982 it lost eight female vice-presidents who had become pregnant after failing to reach an accommodation with them about working part-time. This bank's experience prompted other banks in the city to reassess their policy on hours. See Diane Casselberry Manuel, *Business Responds to Family Concerns*, CHRISTIAN SCI. MONITOR, May 10, 1982, at 17.

92. McCroskey, *supra* note 84, at 30, 33.

93. See *id.* at 32-33.



agencies and major corporations flocked to a conference on "New Management Initiatives for Working Parents" held at Wheelock College in Boston in 1981, and hundreds more invited consultants, usually accompanied by their research teams or "groups," to come into their firms, conduct on-site surveys, and then design customized solutions. Most in demand were consultants who could offer unique "products" such as "cafeteria-style benefits," an array devised to compensate employees who would not make use of benefits such as childcare, which accrued only to the parents of young children.<sup>94</sup> Cafeteria plans ensured fairness across the board by allowing employees to pick and choose among a range of benefits that might include discount tickets to ball games or membership in a health club as well as childcare. Consultants could guide personnel departments through the administrative complexities involved in setting up such plans.<sup>95</sup>

Consultants and research groups were only one type of spin-off from the benefits bonanza. Day care brokers offered to locate "slots" and providers to suit particular clients, while firms such as "Wheezles and Sneezles" in Minneapolis specialized in lining up caretakers for sick children on short notice.<sup>96</sup> For companies that still preferred to provide their own, commercial day care vendors pitched proposals for setting up and operating on-site centers. Such vendors could oversee every aspect of the service, including design and construction of the building, curriculum development, menu planning, hiring, training, supervising personnel, and so on.

By extricating the functions of planning and operating childcare from corporate personnel divisions, repackaging them, and then marketing them back, such services allowed companies to reap the benefits of enlightened employerhood while avoiding the headaches involved in setting up a whole new operation or division. To companies accustomed to purchasing parts and equipment (or, closer to home, health insurance and pension plans) from outside vendors or suppliers, it seemed only logical to contract for childcare. At the same time the creativity and momentum generated by spin-offs helped to channel and maintain energy around the idea of corporate childcare, making it more feasible for employers to "install" as well as more attractive to employees. Employers were also encouraged by the 1981 Economic Recovery Tax Act,<sup>97</sup> which allowed employers to accelerate depreciation for the cost of constructing on-site or nearby childcare facilities. By 1986, the annual value of taxes foregone under this provision amounted to \$110 million. The proliferation of employer-

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94. "Employers offering even limited child-care assistance" often received complaints and heard expressions of resentment from non-parents. Joann S. Lublin, *The New Interest in Corporate Day-Care*, WALL ST. J., April 20, 1981, at 18.

95. The 1981 Boston conference devoted a workshop to this subject. See NEW MANAGEMENT INITIATIVES FOR WORKING PARENTS: REPORTS FROM AN APRIL 1981 CONFERENCE 99-103 (Clifford Baden & Dana E. Friedman eds., 1981).

96. See Judy Foreman, *Working Parents Do Better in Boston*, BOSTON GLOBE, Apr. 8, 1981, at 63.

97. Pub. L. No. 97-34, 95 Stat. 172 (codified as amended at 26 U.S.C. § 129 (1996)).

supported services, combined with their growing popularity, raised employee expectations and consolidated a clientele for what appeared to be an expanded, woman-friendly privatized welfare state.

### *A Spur to the Private Sector*

Even at its height, however, the supply of employer-sponsored childcare was not adequate to meet the need for services, but other forms of privatized childcare were also expanding. As with the corporate sector, this component of the privatized welfare state benefited from governmental incentives, most of which were directed toward subsidizing *demand*, not *supply*. Just as Reagan was slashing support for childcare for the poor, federal expenditures for childcare for *middle*-class families were being markedly increased (see Table 1). Under the "Dependent Care Assistance Plan" provisions of the Economic Recovery Tax Act, individuals were permitted to exclude the value of employer-provided childcare services from their gross income.<sup>98</sup> At the same time, the amount of the childcare tax credit was increased (mainly to the advantage of lower-income families) and the Internal Revenue Code was modified to permit taxpayers to shelter pre-tax dollars for childcare and other personal and dependent care services in "flexible spending plans" (families had to choose between flexible spending or the tax credit).<sup>99</sup> By 1986, the total value of these foregone taxes had risen to over \$3 billion, more than triple what it had been in 1980, and by far the federal government's greatest single expenditure for childcare.<sup>100</sup>

The nature of these policies—tax cuts for individuals and tax breaks for employers—were intended to facilitate parent choice and spur childcare initiatives in the private sector. To a large extent, they appear to have achieved the desired effect. A sizable increase in the labor force participation rates of middle-class mothers made such policies especially timely (see Tables 2-4).<sup>101</sup> This group of women both needed childcare and was reasonably well positioned to take advantage of financial assistance in the form of tax credits or flexible spending accounts, which require advance planning and some flexibility in household cash flow.

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98. Such services were generally offered to mid- or upper-level (middle-class) employees. See 26 U.S.C. § 129 (1996).

99. See Priv. Ltr. Rul. 9547033, 1995 PRLXIS 1509; see also KAHN & KAMERMAN, *supra* note 43 at 195-96.

100. See KAHN & KAMERMAN, *supra* note 43 at 19.

101. Though I realize this is somewhat problematic, I am taking the category "married mothers, husbands present" as a surrogate for working-class or middle-class families, that is, those families likely to have a stable income.

Table 2

Labor Force Participation of Mothers with Young Children  
in March 1980 and March 1986, by Marital Status<sup>102</sup>

	1980	1986
All mothers with children under six	47%	54%
Married mothers, husband present	45	54
Women heading families alone	55	59

Table 3

Labor Force Participation of Wives with Young Children,  
Husbands Present, March of Selected Years, 1970-1985<sup>103</sup>

	1970	1975	1980	1985
With children under 18	39.8%	44.9%	54.3%	61.0%
With children under 6	30.3	36.8	45.3	53.7
With children under 1	24.0	30.8	39.0	49.4

Table 4

Children Under Age 6 by Type of Family and Labor Force Status of Mothers,  
March 1980 and March 1986<sup>104</sup>

<i>Percentage with mother in labor force</i>	1980	1986
All families	43%	51%
Married-couple families	42	51
Families maintained by women	50	54

The relaxation of federal standards also spurred the growth of privatized childcare, nowhere more than in the for-profit sector. Operators of commercial centers gravitated toward regions of the country that were underserved by non-profits and states that had looser regulations. From 1980 to 1985, Kinder-Care, the largest chain of proprietary childcare centers, more than doubled in size, expanding from 510 centers serving 53,000 children to 1040 centers with a capacity for 100,000, while Children's World, the third-largest chain, grew from 84 centers in seven states to 240 centers in thirteen states.<sup>105</sup>

102. KAHN & KAMERMAN, *supra* note 43, at 11 tbl.1.4.

103. *See id.* at tbl.1.5.

104. *See id.* at 12 tbl.1.6.

105. *See WHO CARES FOR AMERICA'S CHILDREN? CHILD CARE POLICY FOR THE 1990S* 159 (Cheryl D. Hayes et al. eds., 1990) [hereinafter WHO CARES FOR AMERICA'S CHILDREN?]; *see also* Sharon L. Kagan &

It would be misleading to suggest that only the for-profit sector of the privatized welfare state expanded during this period; many non-profit childcare facilities were established as well. Among the sponsors were educational institutions and voluntary organizations such as the YWCA and the Salvation Army, which made childcare a national priority, as well as hundreds of local groups, both independent and affiliated. Churches and synagogues started childcare centers or converted existing part-day nursery schools into all-day programs. The availability of these new services facilitated a shift from family-based to center-based care; between 1958 and 1982 the proportion of families using childcare centers of all types more than quadrupled.<sup>106</sup>

Family-based childcare by both relatives and non-relatives increased from 1958 through 1982, but fell off somewhat from 1982 to 1994.<sup>107</sup> Throughout these years, the use of family providers exceeded the use of center-based care, though the margin shrank over time. In 1982, over forty-six percent of wage-earning mothers used family-based care (over twenty-five percent by nonrelatives and almost twenty-one percent by relatives), as opposed to nearly twenty percent who used center-based care. By 1994, those figures had changed markedly: only thirty-three percent used family-based care (twenty percent nonrelatives, thirteen percent relatives), as opposed to twenty-eight percent who used centers. Much of the shift appears to have been from care by relatives to center-based care.<sup>108</sup> But a core of families continued to prefer family-based care by non-relatives.

At the same time the proportion of families with employed mothers using in-home care by non-relatives declined significantly, though it remained an important source of care for upper middle-class and upper-income families. For various reasons, many of those in a financial position to do so preferred to avoid group care situations when possible, though for older preschool children they often arranged a combination of part-day nursery school and in-home caregiving.<sup>109</sup>

As a result of these various arrangements, a multi-tiered system emerged during the 1980s: publicly funded centers or family caregivers struggling, with declining resources, to provide childcare for poor and low-income children; family childcare with a primarily working-class and lower middle-class clientele; voluntary or proprietary centers for middle-class families; and in-home caregiving by nonrelatives, supplemented by nursery schools, for the well-to-do.

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106. See BARBARA R. BERGMANN, *THE ECONOMIC EMERGENCE OF WOMEN* 284 (1986).

107. See *id.*

108. In some instances, relatives who were initially willing to care for kin children branched out to take in non-kin children, charging fees for services they had previously provided to kin for nothing. See generally CAROLINE ZINSSER, *RAISED IN EAST URBAN: CHILD CARE CHANGES IN A WORKING-CLASS COMMUNITY* (1991).

109. See JULIA WRIGLEY, *OTHER PEOPLE'S CHILDREN* (1995); ZINSSER, *supra* note 108.

*Social and Economic Markets*

Though providers of all types in the private sector were responding to the same perception of a critical need for childcare services, their motivations, goals, and methods, as well as the quality of care offered, differed considerably, particularly when proprietary and voluntary childcare were compared. Most observers concurred that, with a few notable exceptions, the level of care in non-profits generally exceeded that at proprietary centers.<sup>110</sup> While Children's World centers were, for example, generally considered high in quality, the majority of for-profits sought to keep standards low and, if part of a chain, standardized equipment and curricula to the detriment of accommodating cultural variations and preferences among clienteles. The profit motive clearly affected the atmosphere of childcare facilities. While the environments and curricula of voluntary centers took many forms and shapes, often reflecting the countercultural tastes of their founders, for-profits maintained a level of quality that tended to be no better than absolutely required. One study found that, "while all centers met licensing requirements, none exceeded minimum standards. Centers were clean and bright, but unimaginative."<sup>111</sup>

Whether voluntary, independent for-profits, or chains, all childcare centers tended to operate with extremely tight budgets. Chains were able to achieve certain economies of scale in purchasing supplies and equipment and through multiple construction projects, but this kind of savings was seldom available to independent centers. The major expense—and therefore the major site for realizing a profit, if that was the goal—was (and is) in salaries, and this could be achieved only by maintaining the lowest possible wage scales and caregiver-to-child ratios the local labor market and the law would allow. According to one study, in 1982 for-profit centers spent only sixty-three percent of their budgets on salaries, compared to seventy-three percent spent by non-profits.<sup>112</sup> Another study in the mid-seventies found that the salary ranges in non-profit centers were generally about five to ten percent higher than those in for-profit centers, even though caregiver-to-child ratios were higher in the former than the latter.<sup>113</sup> Turnover, not surprisingly, was greater at for-profits than at voluntary centers. To cover the cost of higher salaries and better staffing ratios and to ensure continuity, fees at non-profits sometimes ran higher than at commercial facilities.

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110. See WHO CARES FOR AMERICA'S CHILDREN?, *supra* note 105, at 160.

111. Kagan & Glennon, *supra* note 105, at 408 (discussing a study conducted by The Women's Research Action Project in 1974).

112. See *id.* at 406.

113. See MARCY WHITEBROOK ET AL., NATIONAL CHILD CARE STAFFING STUDY, WHO CARES? CHILD CARE TEACHERS AND THE QUALITY OF CARE IN AMERICA 15-16 (1989); KEYSERLING, *supra* note 73, at 100-07, reprinted in *Rights of Children*, *supra* note 73, at 666-73; WHO CARES FOR AMERICA'S CHILDREN, *supra* note 105, at 160-61; see also JEFFREY TRAVERS & RICHARD RUOPP, NATIONAL DAY CARE STUDY: PRELIMINARY FINDINGS AND THEIR IMPLICATIONS 22 (Sally Weiss ed., 1978) (discussing similar differences between government-funded and pure parent-fee centers).

While voluntary childcare centers struggled to offer the best possible care while still keeping fees as low as possible, proprietary childcare center operators sought to maintain or, preferably, raise profit margins by keeping standards and regulation to a minimum, even if this meant (as it inevitably did) compromising quality. When legislators and children's advocates called for tougher requirements at both the federal and state levels, the proprietaries rose to challenge them.<sup>114</sup> By the early 1980s, the National Association of Childcare Management (NACCM), with a membership of owners and managers of proprietary centers, had become "a strong lobby on Capitol Hill."<sup>115</sup> Their chief concern was to block federal standards that would raise either staffing levels or salary requirements.

Recent research has found a strong relationship between compensation and levels of childcare. "The most important predictor of the quality of care children receive, among the adult work environment variables, is staff wages," according to a 1989 National Childcare Study.<sup>116</sup> The study also found that childcare staff salaries were "abysmally low" compared to other employees with similar levels of education and training; that between 1977 and 1988, "staff turnover has nearly tripled . . . jumping from 15% . . . to 41%," and that "children attending lower-quality centers [i.e. those with lower staff salaries and provider-to-child ratios] were less competent in language and social development."<sup>117</sup> While low salaries are endemic throughout the childcare field, they have, as noted above, tended to be lower in proprietary than in voluntary childcare centers. Thus children attending the for-profits during the 1980s were more likely to suffer the sequelae of their caretakers' poor pay.

### *Outside the Centers*

During this same period, more informal arrangements such as family childcare and in-home caregiving were also expanding.<sup>118</sup> The proportion of mothers using family care doubled between 1958 and 1982, with the bulk of the clientele coming from working-class or lower middle-class backgrounds—much like the providers themselves.<sup>119</sup>

It is difficult to document precisely the patterns of growth in this sector of care because most providers operated independently in a kind of occupational "gray market."<sup>120</sup> Somewhat self-effacing, they did not regard themselves as

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114. For a discussion of motives from the perspective of the proprietaries, see Ann Muscari, *Aims, Policies, and Standards of For-Profit Child Care*, in *CARING FOR CHILDREN: CHALLENGE TO AMERICA* 233 (Jeffrey S. Lande et al. eds., 1989). Muscari was affiliated with Kinder-Care.

115. Kagan & Glennon, *supra* note 105, at 410.

116. CHILD CARE EMPLOYEE PROJECT, WHO CARES? CHILD CARE TEACHERS AND THE QUALITY OF CARE IN AMERICA 4 (1989).

117. *Id.*

118. See BERGMANN, *supra* note 106, at 275-98.

119. See ZINSSER, *supra* note 108, at ch. 1.

120. WHO CARES FOR AMERICA'S CHILDREN?, *supra* note 105, at 151-56.

being professional or even employed in any usual sense. Adopting the identifier “babysitter” rather than childcare provider or caregiver, the providers saw their activities as an extension of their domestic duties requiring no particular training or qualifications other than “a love of children.”<sup>121</sup> Some family providers were young mothers who took in a few extra children in order to afford staying home with their own offspring while they were young. In their minds, they were merely “temporary providers” for whom family day care was an expedient. This group also tended to eschew professionalism with regard to childcare, though they might not have with regard to an occupation outside the home.

It is also difficult to track family care because only a small proportion of the providers were licensed. Some were unlicensed because state laws did not require them to be; others were unlicensed because they did not want to report their income, their homes did not meet the standards, or they wished to avoid oversight for other reasons, such as maintaining ethnic or racial homogeneity. Nevertheless, in the 1970s, several organizations of or for family childcare providers emerged, attracting those who wished to enhance their own visibility and status or obtain access to government benefits, such as food assistance, that might not be available to small-scale providers operating independently.

These informal arrangements should definitely be included in any conceptualization of the private sector of the welfare state, for they clearly filled an important gap in childcare, particularly for lower-income families who fell through the cracks between public provisions and more expensive market-based services. However, as in other instances, this area of the private sector was not completely autonomous or separate from the public sector—the state. Through regulation, however erratic, and through incentives and supports, such as the food program, the government (at both state and federal levels) encouraged and sustained the development of family childcare as another form of market-based services.

While the proportion of families using care in their own homes by either relatives or nonrelatives has declined since 1958, it is still important for upper-income families.<sup>122</sup> Many professional and managerial couples choose this type of arrangement in the belief that it is superior to center or family care. To a great extent, the federal childcare tax credit underwrites this choice—another example of the state encouraging the market—in this case, the market for domestic service workers.

### *Wage-Earning Mothers in the Public-Private Welfare State*

Though both market and nonprofit services constitute a significant part of the privatized welfare state, it is corporate or employer-sponsored childcare that

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121. In some cases the child-care providers' self-effacing stance allows them to avoid the wrath of spouses who oppose employment for women in general, or for their wives in particular.

122. See BERGMANN, *supra* note 106, at 275-98.

has become emblematic of private welfare in the sense that, like health care, it has become, in at least in some sectors of the economy, part of the "benefit package" employees expect. Loudly trumpeted by management, corporate childcare, along with paid maternity and parental leaves, flexible hours, and other provisions and accommodations for working parents, seems to be taking the private sector of the American welfare state in a new direction.<sup>123</sup> But these phenomena also raise a number of questions about what a privatized welfare state means for women. On the one hand, employer-sponsored "family-friendly" policies appear to be a boon to women. But are they? Some observers of the current scene, such as Arlie Hochschild, have suggested that such innovations—particularly when they are under corporate control—can colonize women's time and domestic lives, leading to greater exploitation of both them and their families.<sup>124</sup> Have workplaces become family-friendly, or have families simply attuned themselves to the demands and rhythms of the workplace? Further, attractive benefits lock employees into certain corporations—as indeed they are intended to do. This is particularly true for a service like childcare; a disgruntled employee will think twice about moving to another company when it means wrenching a child from his accustomed teachers and mates.

Whatever the drawbacks of employer-supported benefits for the employees who use them, we must also consider their status as entitlements to women as a whole; that is, can private-sector or employer-sponsored provisions enhance women's social citizenship in general? The two-phase development I have sketched, with the explosion of employer-supported childcare in the second, suggests not. Employers were far more likely to provide such benefits when (a) they were under some form of compulsion from the state to hire women (such as the Equal Opportunity Act when it was actually being enforced by the EEOC); (b) they had made a significant investment in recruiting and training female employees; (c) there was a vacuum in state provision; and (d) there were substantial state-generated incentives such as supplemental funding or tax write-offs. Though firms hired many women during the first phase, these employees tended to be more "disposable," except in industries where substantial ongoing production costs made turnover of even low-level workers expensive.

Low-income women were doubly vulnerable because childcare supported by Title IV-A funding was subject to the whims of Washington as well as local vicissitudes. These funds were, as I have described, sharply reduced during the Reagan administration. This did not curtail the growth of corporate childcare during the eighties, however, because the new services were targeted toward a

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123. Up until this time, the United States government had generally pursued policies that avoided endorsing maternal employment, except in times of emergency or war. See MICHEL, *supra* note 8, (manuscript at 284-461, on file with author). For a discussion of other aspects of the gender implications of employee benefits, see Lauri Perman & Beth Stevens, *Industrial Segregation and the Gender Distribution of Fringe Benefits*, 3 GENDER & SOC'Y 388 (1989).

124. See Arlie Hochschild, *The Culture of Politics: Traditional, Postmodern, Cold-Modern, and Warm-Modern Ideals of Care*, SOC. POL. 331 (1995); see also Stevens, *supra* note 59, at 7.



different cohort of employees who would not, in any case, have been eligible for Title IV-A funding, but who were benefiting from a new set of state incentives designed to spur the growth of privatized childcare.

The private side of the welfare state is, however, *private*, and thus has no responsibility to act as an equalizing, universalizing, or redistributive force. State incentives designed to mobilize the private sector—business—for such purposes will be effective only when they coincide with the interests of business, that is, when they appear to be cost-effective. Non-clients of the private welfare state, that is to say, non-employees of corporations offering childcare and other services, have no purchase in it, no claim to its benefits.

These non-claimants or ineligible may turn to the marketplace or the nonprofit sector to find childcare services, but, as noted above, supplies are erratic, quality varies, and, in the case of commercial centers, profits are often based on the exploitation of childcare workers. Moreover, most poor and low-income women are priced out of the market and have no alternative but to subject themselves to the arbitrary policy directives of the *public* sector. Here, as we have seen, childcare is related not to choice or to women's empowerment, but to racist stereotypes about women's motivation to become mothers and artificially generated perceptions of welfare crisis. While funds for childcare have been earmarked under the terms of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,<sup>125</sup> there are already indications that quality services will not be made readily available. As one Ohio state legislator put it caustically in a recent news interview, "Why should we replace one entitlement with another?"<sup>126</sup>

Thus in both the private and public sectors—and in the policy space that is governed by their complicity—women lack control over the social provisions that govern their lives; neither sector offers the type of unconditional, universal entitlement to childcare and other family benefits required for social citizenship. In the private sector, this means that if a certain corporation or industry has no interest in recruiting or retaining women—if it is under no compulsion to do so—women cannot gain access to a service such as childcare which is essential to their ability to enter and compete effectively in the labor force. Women who *do* have access to employer-supported benefits run the risk that their privileges are contingent upon good behavior as well as the financial health of their sponsors.<sup>127</sup> Women who turn to the nonprofit sector in the hopes of finding high-quality care for their children must compete for scarce spaces and often devote a high proportion of their income to fees—a proportion that is seldom

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125. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (amending scattered sections of 42 U.S.C.).

126. *The NewsHour with Jim Lehrer* (PBS television broadcast, Feb. 6, 1997) (statement of Rep. Joan Lawrence).

127. Even more detached from a potential childcare lobby are parents who hire nannies or other in-home childcare providers and disdain all forms of group childcare for their children. See generally WRIGLEY, *supra* note 109 (discussing the privatization of childcare for upper-income families).

fully offset by tax write-offs. Women who use commercial services face the same high costs without the assurance of quality. The public sector may provide women with free or low-cost care, but at the price of coercion, humiliation, and uncertainty. Public funding is not guaranteed, and criteria for eligibility change frequently.

But perhaps the greatest impact of the public-private welfare state is political; it has created a deeply divided constituency for childcare. Employer-sponsored services have generated an employee elite that serves to hive off an articulate and powerful cohort of women (and men) who might otherwise lend their strength to a lobby for universal childcare and other family provisions through the nonprivatized sector of the welfare state. Consumers of market, nonprofit, family, and in-home provisions are equally alienated from the political process. Usually ideologically committed to the type of care they have chosen, they are also isolated from one another spatially, socially, and temporally, and thus are also incapable of joining in to form a solid childcare lobby. Finally, as the recent welfare debates revealed so tragically, poor and low-income women—though often mobilized—lack the wherewithal to project their voices effectively in policy-making arenas and, without assurance of minimal provisions for themselves, can hardly be expected to push for universal childcare. Because of the political inertia generated by the public-private welfare state, there is little hope that childcare provisions will be expanded any time soon, and thus, at the moment, the prospects for social citizenship for American women appear quite dim.